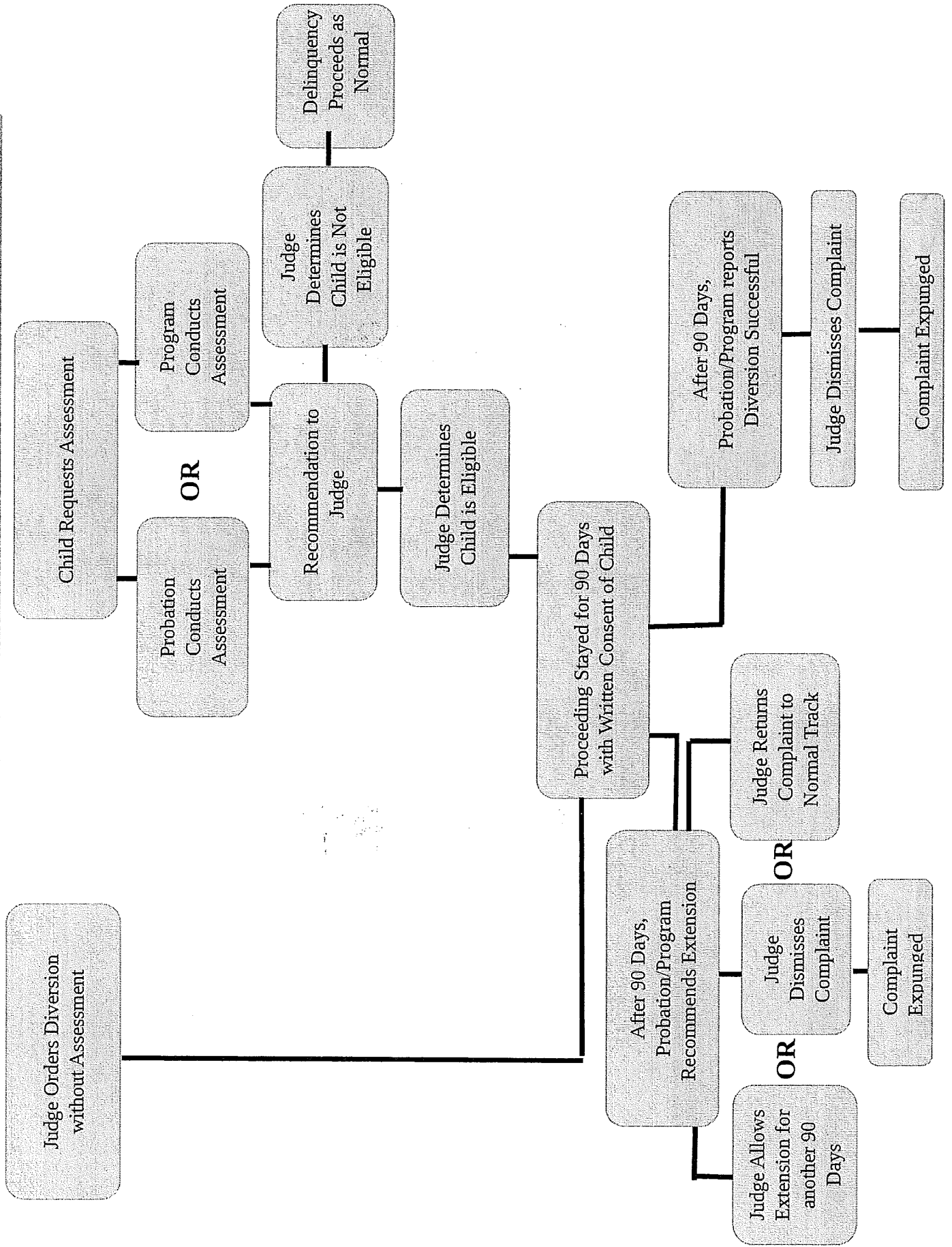


JUVENILE COURT DIVERSION, G.L. c. 119, § 54A



Judicial Diversion

Section 75 of an Act Relative to Criminal Justice Reform amends G.L. c. 119 by adding a new section to the chapter, section 54A. This section codifies diversion in the Juvenile Court and does not require the agreement of the Commonwealth. The section allows the court to divert a child who is the subject of an application for complaint in the Juvenile Court to a diversion program as defined in G.L. c. 276A, § 1. General Laws c. 276A, § 1 defines a program as "any program of community supervision and services including, but not limited to, medical, educational, vocational, social, substance use disorder treatment and psychological services, corrective and preventive guidance, training, performance of community service work, counseling, provision for residence in a halfway house or other suitable place, and other rehabilitative services designed to protect the public and benefit the individual."

Eligibility for Diversion

A child is not eligible for diversion if the child is (1) indicted as a youthful offender; (2) charged with an offense that provides for a mandatory minimum sentence; (3) charged with an offense that prohibits disposing the matter through a continued without a finding or placed on file; (4) charged with an offense that carries a minimum term of incarceration of 5 years or (5) charged with a violation of one or more of the offenses that appear in an attachment of this transmittal.

Assessment and Recommendation

The child may request to undergo an assessment prior to arraignment to enable the judge to consider the suitability of the child for diversion. Probation may conduct the assessment prior to arraignment. The judge may substitute a determination of eligibility from a program for an assessment.

The child may request a continuance to undergo the assessment and must notify the judge prior to arraignment. Once notified of the child's request, the judge may grant a 14 day continuance for the assessment. The child shall not be arraigned during this time and no entry shall be made regarding the case in the criminal offender record information system until the judge issues an order to resume the ordinary processing of the proceeding.

Following the assessment, probation or the director of the program shall submit to the court and child's counsel a recommendation as to whether the child will benefit from diversion. Upon receipt of the recommendation, the judge shall provide an opportunity for the Commonwealth and the child's counsel to be heard regarding diversion. The judge shall make a final determination regarding diversion for the child.

Stay of Proceedings During Diversion

If the child is diverted, the proceeding shall be stayed for 90 days unless the judge determines that the interests of justice would be better served by a lesser period of time. The child must consent to the stay in writing and consent to any terms of conditions imposed during the stay by signing a written waiver of the right to a speedy trial on a

form approved by the Chief Justice of the Juvenile Court.

After the completion of the 90 days, probation or the program shall submit a report to the court indicating successful completion of the program or requesting an additional 90 days so that the child may successfully complete the program.

If extension is recommended the judge may take any action he/she deems appropriate including dismissing the complaint or resuming the proceeding.

Charged with a Subsequent Offense During Stay of Proceedings

If the child is charged with a subsequent offense during the stay, a judge in the court that entered the stay may issue such process as necessary to bring the child before the court. When the child is brought before the court, the judge shall provide an opportunity for the child to be heard. If the judge finds probable cause that the child has committed a subsequent offense, the judge may order that the stay be terminated and that the Commonwealth be permitted to proceed on the original complaint.

Completion of Diversion

The judge may dismiss the complaint against the child if probation or the program indicate that the child successfully completed diversion.

If the child has not successfully completed the diversion program, the child's attorney shall be notified prior to the child's termination from the diversion program. The judge may grant an extension to the stay of proceedings if the child provides 'good cause' for failing to comply with the conditions of diversion.

Dismissal of Complaint/Expungement

Whenever a judge dismisses a complaint upon the successful completion of diversion or after declining to extend diversion for an additional 90 day period, the court shall, unless the child objects, enter an order directing expungement of any records of the complaint and related proceedings maintained by the clerk, the court, the Department of Criminal Justice Information Services and the Court Activity Record Index.